IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 242 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAGDISH BHAILALBHAI PATEL & 1 - Appellant(s)
Versus
VIJAYA BANK & 2 - Defendant(s)

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Appearance :
MR SANDIP C SHAH for Appellant(s) : 1 - 2.
MR DARSHAN M PARIKH for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 19/07/2006

ORAL JUDGMENT

By way of this Appeal, the appellants, original-defendants No. 3 and 4, have challenged the judgment and decree passed by the learned Judge, City Civil Court at Ahmedabad, dated

27.6.1990 in Summary Civil Suit No. 4186 of 1982 by which the learned Judge has decreed the suit filed by the respondent No.1-Bank original-plaintiff for a sum of Rs. 70,886.45 ps., with interest at the rate of 16% from the date of suit till realisation from appellants as well as respondents No. 2 and 3. Respondent No.2 herein, original-defendant No.1 was the partnership firm and the appellants and the respondent No.3 herein, original-defendants No. 2 to 4 were the partners at the relevant time when a loan was taken from the original-plaintiff, Vijaya Bank.

2. A Suit came to be filed by the Bank for recovery of Rs. 70,886.45 ps., from the defendants. The suit was opposed by the appellants herein, original-defendants No. 3 and 4 on the ground that defendant No.1 firm was dissolved in the year 1978 and the defendant No.2 became the sole proprietor of the firm and therefore after the dissolution they cannot be

held liable. It was also the case of the appellants that as the firm was dissolved in 1978 and the suit was filed in October 1982 the suit is barred against defendants No. 3 and 4, appellants herein. The defendants No. 3 and 4, i.e., appellants herein produced copy of the Dissolution Deed at Exh. 86. The learned Judge, after considering the evidence on record and considering the provisions of the Indian Partnership Act, more particularly Section 45, Section 63, and Section 72, held that as there was no public notice and also intimation to the Bank with regard to change in partnership the appellants original-defendants No. 3 and 4 cannot escape from the liability and therefore ultimately passed a decree for a sum of Rs. 70,886.45 ps., with interest. Being aggrieved and dissatisfied with the same, the appellants, original-defendants No. 3 and 4, only have preferred the present Appeal.

3. Shri Sandip Shah, learned advocate appearing on behalf of the appellants has vehemently submitted that the learned trial Court has materially erred in passing the decree against the appellants more particularly when the partnership firm was already dissolved and the defendant No.2 became the sole proprietor. He has further submitted that even otherwise when the suit was filed in the month of October 1982 and the partnership firm was dissolved in 1978, the suit was duly time barred against the defendants No. 3 and 4 the appellants herein and any act of the defendants No. 1 and 2 subsequent to dissolution will not be binding to the appellants and therefore it is requested to allow the present appeal qua the appellants of original-defendants No. 3 and 4.

4. A specific issue was framed by the learned trial Court, i.e., Issue No.9 with regard to liability of the defendants No. 3 and 4. On

behalf of plaintiffs, one Rajesh Yagnik was examined at Exh. 56 and he deposed that no intimation about the dissolution of the firm and leaving of the defendants No. 3 and 4 as partners of defendant No.1 was given to the plaintiff Bank. The appellant No.1 herein, original-defendant No.3 was examined at Exh. 87. In the cross-examination, he admitted that they had not given any public notice in any newspaper about the dissolution of the firm. He also admitted in the cross-examination that such intimation was not published in the gazette. He also admitted that defendant firm was registered under the Indian Partnership Act and though he has deposed that intimation about dissolution of the firm was given to the Chartered Accountant of the firm and to the Registrar of Firms, he had not given any documentary evidence to that effect though assured. He has also admitted in the cross-examination that he had not sent any written intimation to the plaintiff Bank about the

dissolution of the firm. He has further submitted that even after the public notice and the auction of the pledged goods he had not informed the plaintiff about dissolution of the firm. Document Exh. 58 was executed in the name of defendant No.1 firm signed by defendants No. 2, 3 and 4 as partners. They have also executed a promissory note. The learned trial Court, considering the provisions of Section 45, 63(1) and 72 of the Indian Partnership Act, and considering the evidence on record, and considering the fact that there is nothing on record that any public notice under Section 72 of the Act was given and/or the plaintiff Bank was informed about the dissolution of the firm and after considering the same the learned trial Court held the defendants No. 3 and 4 as liable and passed the decree. Considering the evidence on record, more particularly no intimation from the defendants No. 3 and 4 with regard to dissolution of the partnership to the plaintiff

bank and/or any public notice with regard to dissolution of the partnership the trial court has rightly held the defendants No. 3 and 4 liable to make payment and rightly passed a decree against the defendants No. 3 and 4 also. Considering the provisions of the Partnership Act, no interference of this Court is required. Once the Issue No.9 is answered accordingly, considering the provision of the Indian Partnership Act, the contention on behalf of the appellants with regard to limitation also cannot be accepted as for all purposes they continue to be the partners and whatever is done by other partners is binding to the appellants also as they have failed to undertake to the plaintiff Bank with regard to dissolution of partnership.

5. For the reasons stated above, the appeal is required to be dismissed and is accordingly

dismissed. However, there shall be no order as to costs.

[M. R. Shah, J.]

RMR.ss